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Attorneys for Plaintiff Contagious, LLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CONTAGIOUS, LLC, a Utah limited liability
company,

Plaintiff,

vs.

DOES 1-90,

Defendants.

**COMPLAINT AND
JURY DEMAND**

Case No. 2:18-cv-00260

Magistrate Judge Evelyn J. Furse

Plaintiff, Contagious, LLC (Contagious), hereby complains against Defendants DOES 1-90 as follows:

1. Plaintiff, Contagious, LLC, is a Utah limited liability company with a principal place of business in Heber City, Utah.

2. The identity of DOE 1 is currently unknown, but on information and belief, Defendant DOE 1 is the owner or operator of the website activeforcegear.com.

3. The identity of DOE 2 is currently unknown, but on information and belief, Defendant DOE 2 is the owner or operator of the website aeternityshop.com.

4. The identity of DOE 3 is currently unknown, but on information and belief, Defendant DOE 3 is the owner or operator of the website allegria-boutique.com.

5. The identity of DOE 4 is currently unknown, but on information and belief, Defendant DOE 4 is the owner or operator of the website allthewishes.com.

6. The identity of DOE 5 is currently unknown, but on information and belief, Defendant DOE 5 is the owner or operator of the website becuteplanet.com.

7. The identity of DOE 6 is currently unknown, but on information and belief, Defendant DOE 6 is the owner or operator of the website bigbarsa.com.

8. The identify of DOE 7 is currently unknown, but on information and believe Defendant DOE 7 is the owner and operator of the website blupryntinc.com and is believed to be Bluprynt Inc., a company having a business address in Brooklyn, New York.

9. The identity of DOE 8 is currently unknown, but on information and belief, Defendant DOE 8 is the owner or operator of the website bonafo.com.

10. The identity of DOE 9 is currently unknown, but on information and belief, Defendant DOE 9 is the owner or operator of the website buzz-deal.com.

11. The identity of DOE 10 is currently unknown, but on information and belief, Defendant DOE 10 is the owner or operator of the website bybuddha.com.

12. The identity of DOE 11 is currently unknown, but on information and belief, Defendant DOE 11 is the owner or operator of the website chicdelightss.com.

13. The identity of DOE 12 is currently unknown, but on information and belief, Defendant DOE 12 is the owner or operator of the website culturedlady.com.

14. The identity of DOE 13 is currently unknown, but on information and belief, Defendant DOE 13 is the owner or operator of the website dailyytrends.com.

15. The identity of DOE 14 is currently unknown, but on information and belief, Defendant DOE 14 is the owner or operator of the website elisyan.com.

16. The identity of DOE 15 is currently unknown, but on information and belief, Defendant DOE 15 is the owner or operator of the website epanouijewelry.com.

17. The identity of DOE 16 is currently unknown, but on information and belief, Defendant DOE 16 is the owner or operator of the website everypop.com.

18. The identity of DOE 17 is currently unknown, but on information and belief, Defendant DOE 17 is the owner or operator of the website expressvshops.com, and is believed that DOE 17 may be ExpressV Shops Gidon Ben Yoash, Kiryat Gat, Israel 82100.

19. The identity of DOE 18 is currently unknown, but on information and belief, Defendant DOE 18 is the owner or operator of the website famedstyle.com.

20. The identity of DOE 19 is currently unknown, but on information and belief, Defendant DOE 19 is the owner or operator of the website feelsandvibes.com, and may be D. Missclick, 12 Octaviolaan 39, Capelle Aan Den Ijssel, The Netherlands 2909RB

21. The identity of DOE 20 is currently unknown, but on information and belief, Defendant DOE 20 is the owner or operator of the website flirtybug.com.

22. The identity of DOE 21 is currently unknown, but on information and belief, Defendant DOE 21 is the owner or operator of the website frogsavings.com.

23. The identity of DOE 22 is currently unknown, but on information and belief, Defendant DOE 22 is the owner or operator of the website furioze.com.

24. The identity of DOE 23 is currently unknown, but on information and belief, Defendant DOE 23 is the owner or operator of the website gearvilla.myshopify.com.

25. The identity of DOE 24 is currently unknown, but on information and belief, Defendant DOE 24 is the owner or operator of the website hopeeco.shop.

26. The identity of DOE 25 is currently unknown, but on information and belief, Defendant DOE 25 is the owner or operator of the website houseicons.com.

27. The identity of DOE 26 is currently unknown, but on information and belief, Defendant DOE 26 is the owner or operator of the website itsallpremium.com.

28. The identity of DOE 27 is currently unknown, but on information and belief, Defendant DOE 27 is the owner or operator of the website kunionline.com.

29. The identity of DOE 28 is currently unknown, but on information and belief, Defendant DOE 28 is the owner or operator of the website leboutiqueexpress.com.

30. The identity of DOE 29 is currently unknown, but on information and belief, Defendant DOE 29 is the owner or operator of the website legendarygift.com.

31. The identity of DOE 30 is currently unknown, but on information and belief, Defendant DOE 30 is the owner or operator of the website limitednicheshop.com.

32. The identity of DOE 31 is currently unknown, but on information and belief, Defendant DOE 31 is the owner or operator of the website meilleurscadeauxutiles.com.

33. The identity of DOE 32 is currently unknown, but on information and belief, Defendant DOE 32 is the owner or operator of the website missvik.com.

34. The identity of DOE 33 is currently unknown, but on information and belief, Defendant DOE 33 is the owner or operator of the website mojoepicshop.com.

35. The identity of DOE 34 is currently unknown, but on information and belief, Defendant DOE 34 is the owner or operator of the website mrswaggy.com.

36. The identity of DOE 35 is currently unknown, but on information and belief, Defendant DOE 35 is the owner or operator of the website nasyri.com.

37. The identity of DOE 36 is currently unknown, but on information and belief, Defendant DOE 36 is the owner or operator of the website outletsecret.com.

38. The identity of DOE 37 is currently unknown, but on information and belief, Defendant DOE 37 is the owner or operator of the website pandashopcity.com.

39. The identity of DOE 38 is currently unknown, but on information and belief, Defendant DOE 38 is the owner or operator of the website pickydealz.com, who may be Raymundo J. Pachall of Louisville, Kentucky.

40. The identity of DOE 39 is currently unknown, but on information and belief, Defendant DOE 39 is the owner or operator of the website plutodeals.com.

41. The identity of DOE 40 is currently unknown, but on information and belief, Defendant DOE 40 is the owner or operator of the website preiskoenig24.com.

42. The identity of DOE 41 is currently unknown, but on information and belief, Defendant DOE 41 is the owner or operator of the website rossicollective.com

43. The identity of DOE 42 is currently unknown, but on information and belief, Defendant DOE 42 is the owner or operator of the website shopcrcl.com.

44. The identity of DOE 43 is currently unknown, but on information and belief, Defendant DOE 43 is the owner or operator of the website shophthewaze.com.

45. The identity of DOE 44 is currently unknown, but on information and belief, Defendant DOE 44 is the owner or operator of the website showmen.co.

46. The identity of DOE 45 is currently unknown, but on information and belief, Defendant DOE 45 is the owner or operator of the website speakshop.co.

47. The identity of DOE 46 is currently unknown, but on information and belief, Defendant DOE 46 is the owner or operator of the website super-discount.us, who may be Alain Abulafya, 65 Avenue Foch, Paris, France 75116.

48. The identity of DOE 47 is currently unknown, but on information and belief, Defendant DOE 47 is the owner or operator of the website super-prix.fr, who may be Maxime Cadet, 95 Rue des Pastures, 0007130 Binche Hainaut, Belgium.

49. The identity of DOE 48 is currently unknown, but on information and belief, Defendant DOE 48 is the owner or operator of the website tendenciashopping.com.

50. The identity of DOE 49 is currently unknown, but on information and belief, Defendant DOE 49 is the owner or operator of the website theshoppingdepot.net.

51. The identity of DOE 50 is currently unknown, but on information and belief, Defendant DOE 50 is the owner or operator of the website thronesdepot.com.

52. The identity of DOE 51 is currently unknown, but on information and belief, Defendant DOE 51 is the owner or operator of the website tokimart.com.

53. The identity of DOE 52 is currently unknown, but on information and belief, Defendant DOE 52 is the owner or operator of the website topelle.fr, who may be Raphael Muller, 35 Rue de Huningue, Aprt. 125, 68300 Saint Louis, France.

54. The identity of DOE 53 is currently unknown, but on information and belief, Defendant DOE 53 is the owner or operator of the website trekkdeals.com.

55. The identity of DOE 54 is currently unknown, but on information and belief, Defendant DOE 54 is the owner or operator of the website trendy.gift.

56. The identity of DOE 55 is currently unknown, but on information and belief, Defendant DOE 55 is the owner or operator of the website trendyholo.com.

57. The identity of DOE 56 is currently unknown, but on information and belief, Defendant DOE 56 is the owner or operator of the website trendyparadize.com.

58. The identity of DOE 57 is currently unknown, but on information and belief, Defendant DOE 57 is the owner or operator of the website tripoli-shop.com.

59. The identity of DOE 58 is currently unknown, but on information and belief, Defendant DOE 58 is the owner or operator of the website unijamms.com.

60. The identity of DOE 59 is currently unknown, but on information and belief, Defendant DOE 59 is the owner or operator of the website united-accessories.com.

61. The identity of DOE 60 is currently unknown, but on information and belief, Defendant DOE 60 is the owner or operator of the website vaultsupply.co.

62. The identity of DOE 61 is currently unknown, but on information and belief, Defendant DOE 61 is the owner or operator of the website viralvessel.com.

63. The identity of DOE 62 is currently unknown, but on information and belief, Defendant DOE 62 is the owner or operator of the website whats-shop.com.

64. The identity of DOE 63 is currently unknown, but on information and belief, Defendant DOE 63 is the owner or operator of the website wholesomejoe.com.

65. The identity of DOE 64 is currently unknown, but on information and belief, Defendant DOE 64 is the owner or operator of the website wishaddict.com.

66. The identity of DOE 65 is currently unknown, but on information and belief, Defendant DOE 65 is the owner or operator of the website Wunschdeals.de.

67. The identity of DOE 66 is currently unknown, but on information and belief, Defendant DOE 66 is the owner or operator of the website aperfectu.co.

68. The identity of DOE 67 is currently unknown, but on information and belief, Defendant DOE 67 is the owner or operator of the website bodaoppa.com.

69. The identity of DOE 68 is currently unknown, but on information and belief, Defendant DOE 68 is the owner or operator of the website bohobaby.io.

70. The identity of DOE 69 is currently unknown, but on information and belief, Defendant DOE 69 is the owner or operator of the website dullicet.com.

71. The identity of DOE 70 is currently unknown, but on information and belief, Defendant DOE 70 is the owner or operator of the website emmabea.com.

72. The identity of DOE 71 is currently unknown, but on information and belief, Defendant DOE 71 is the owner or operator of the website fancota.com.

73. The identity of DOE 72 is currently unknown, but on information and belief, Defendant DOE 72 is the owner or operator of the website flunna.com.

74. The identity of DOE 73 is currently unknown, but on information and belief, Defendant DOE 73 is the owner or operator of the website greysonandco.com.

75. The identity of DOE 74 is currently unknown, but on information and belief, Defendant DOE 74 is the owner or operator of the website inspireuplift.com.

76. The identity of DOE 75 is currently unknown, but on information and belief, Defendant DOE 75 is the owner or operator of the website mywowmart.com.

77. The identity of DOE 76 is currently unknown, but on information and belief, Defendant DOE 76 is the owner or operator of the website northsidegear.com.

78. The identity of DOE 77 is currently unknown, but on information and belief, Defendant DOE 77 is the owner or operator of the website orangepandastore.com.

79. The identity of DOE 78 is currently unknown, but on information and belief, Defendant DOE 78 is the owner or operator of the website shopitty.com.

80. The identity of DOE 79 is currently unknown, but on information and belief, Defendant DOE 79 is the owner or operator of the website shopmy.deals.

81. The identity of DOE 80 is currently unknown, but on information and belief, Defendant DOE 80 is the owner or operator of the website trendychaser.com.

82. The identity of DOE 81 is currently unknown, but on information and belief, Defendant DOE 81 is the owner or operator of the website unikgadgets.com.

83. The identity of DOE 82 is currently unknown, but on information and belief, Defendant DOE 82 is the owner or operator of the website womanoocean.com.

84. The identity of DOE 83 is currently unknown, but on information and belief, Defendant DOE 83 is the owner or operator of the website zongood.com

85. DOES 84 through 90 are believed to be companies and individuals working in conjunction with Defendants who have participated in the actions set forth below:

JURISDICTION AND VENUE

86. This action arises under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*, the Utah Truth in Advertising Act, Utah Code 13-11a-1 *et seq.*, and Utah common law. This Court has jurisdiction over the copyright claims under 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over the state laws claims pursuant to 28 U.S.C. § 1367 as the state law claims are so related to the copyright claims that they form part of the same case or controversy.

87. Venue is proper in this district by virtue of 28 U.S.C. §§ 1391 and 1400 because, on information and belief, Defendants' acts of copyright infringement took place and are still taking place within this jurisdiction, namely Defendants copied copyrighted images from websites within this district and continue to use those images within this district without authorization.

GENERAL ALLEGATIONS

88. Plaintiff Contagious is a reseller of clothing and accessories and markets its products on-line.

89. To promote its products, Contagious often takes photographs of the products it sells.

90. Contagious' photographs are often empirically tested to determine which photographs are most likely to result in the sale of the displayed product.

91. Contagious often markets its products through "deal" websites where its products are offered for a limited period of time at competitive market prices.

92. Many deal websites are competitive and select suppliers who demonstrate a high sales volume based on their deals.

93. Many deal websites require exclusivity and prohibit their suppliers from listing their products on another deal website within a predefined window of time associated with offering the supplier's product.

94. Because of the high correlation between Contagious' photographs and high sales of its products on such websites, Contagious has been given increased access to deal websites.

95. Contagious' photographs are highly valuable and are associated with Contagious' services selling clothing.

96. Contagious is the owner by assignment, effective July 2017, of all right, title and interest in and to copyrighted images including: IMG_9401. A copy of the image is shown in Exhibit A.

97. Contagious has a registered copyright for preceding images as evidenced by Copyright Registration VA 2-902-811. A copy of the registration is attached hereto as Exhibit B.

98. Jane.com is a deal website based in Lehi, Utah.

99. Contagious is one of the top suppliers featured on jane.com.

100. On information and belief, Defendants copied the copyrighted image from the website jane.com.

101. On information and belief, Defendants have used the copyrighted image at:
activeforcegear.com/products/trendy-soft-knit-beanie-for-women-
ponytailaeternityshop.com

allegria-boutique.com/collections/best-selling

allthewishes.com/collections/vestuario/products/toca-estilosa-com-abertura-para-os-cabelos

becuteplanet.com/collections/fitness-equipment/products/soft-knit-beanie

bigbarsa.com/collections/clothing

blupryntinc.com/products/blupryntinc-com-products-soft-knitted-ponytail-stretch-beanie-50-free-shipping

bonafo.com/collections/frontpage/products/soft-knit-beanie

bubblegumbetties.com/products/adult-cc-ponytail-beanies

buzz-deal.com/collections/new-arrivals/products/soft-knit-beanie

bybuddha.com/collections/clothing/products/warm-winter-knitted-beanie-bun

chicdelightss.com/products/women-warm-hat-soft-knit-beanie

culturedlady.com/products/soft-knit-beanie

dailyytrends.com/collections/women/products/high-bun-ponytail-bonjean-women-warm-hat

elisyan.com/collections/womens-accessories

epanouijewelry.com/collections/hats-beanies/products/2018-fashion-womens-girl-stretch-knit-hat-messy-bun-ponytail-beanies-hole-y-warm-winter-hats-new-trendy-cc-warm-winter-hat

everypop.com/collections/womens-fashion/products/soft-knit-ponytail-beanie

expressvshops.com/products/soft-knit-beanie

famedstyle.com/collections/featured

feelsandvibes.com/products/knitted-ponytail-beanie

flirtybug.com/collections/winter-hats/products/fashion-womens-girl-hat-winter-warm-stretch-knit-cap-messy-bun-ponytail-beanie

frogsavings.com/products/new-soft-knit-beanie

furioze.com/products/soft-knit-beanie

gearvilla.myshopify.com/products/ponytail-beanie

hopeeco.shop/collections/woman-needs/products/soft-knit-beanie

houseicons.com/products/ashomie-soft-knit-pony-tail-beanies

itsallpremium.com/collections/for-her/products/womens-designer-natural-style-winter-hat

kunionline.com/collections/new-products/products/trendybeanie

leboutiqueexpress.com/products/soft-knit-beanie

legendarygift.com/collections/fashion
limitednicheshop.com/products/ponytail-beanie

meilleurscadeauxutiles.com/collections/nos-meilleurs-ventes/products/bonnet-cc-tricote-main

missvik.com/products/beanietail-womens-knit-pony-tail-beanie-messy-bun-beanie

mojoepicshop.com/collections/beanies/products/fashion-womens-girl-hat-winter-warm-stretch-knit-cap-messy-bun-beanie-ponytail

mrswaggy.com/collections/womens-swig/products/warm-winter-knitted-beanie-bun-1

nasyri.com/collections/frontpage/products/soft-knit-beanie

outletsecret.com/collections

pandashopcity.com/products/soft-knit-beanie

pickydealz.com/products/ponytail

plutodeals.com/collections/homeandkitchen

preiskoenig24.com/products/pferdeschwanz-winter-haube

rossicollective.com

shopcrcl.com/collections/clothing-accessories

shopthewaze.com/collections/whats-hot/products/soft-knit-beanie

showmen.co/products/soft-knit-beanie

speakshop.co/products/the-speak-ponytail-beanie

super-discount.us/collections/women-clothes

super-prix.fr/collections/instabadge-best-selling/products/bonnet-pour-queue-de-cheval-au-crochet

tendenciashopping.com/collections/tendencia/products/warm-hat-cc-trendy-warm-winter-knitted

theshoppingdepot.net/products/soft-knit-beanie

thronesdepot.com/products/soft-knit-beanie

tokimart.com/collections/woman-clothings/products/soft-knit-beanie?variant=3375885811725

topelle.fr/collections/frontpage/products/bonnet-malin

trekkdeals.com/products/premium-pom-pom-soft-beanie

trendy.gift/products/cozy-crafts-ponytail-beanie

trendyholo.com/collections/best-sellers/products/soft-knit-beanie

trendyparadize.com/collections/apparels/products/soft-knit-beanie?variant=10399150080042

tripoli-shop.com/products/new-collection-women-warm-hat-cc-2018-free-shipping

unijamms.com/collections/all

united-accessories.com/collections/flash-sales

vaultsupply.co/collections/products/products/soft-knit-beanie

viralvessel.com/collections/fashion/products/premium-soft-knit-ponytail-beanie

whats-shop.com

wholesomejoe.com/products/soft-knit-beanie

wishaddict.com/products/warm-winter-knitted-beanie-bun-1

wunschdeals.de/collections/bestseller/products/soft-knit-beanie-2018

aperfectu.co/collections/winter-collection/products/soft-knit-beanie-w-pony

bodaoppa.com/products/warm-winter-hat-with-ponytail-hole

bohobaby.io/products/amazing-soft-knit-beanie-for-women

dullicet.com/products/knit-beanie

emmabea.com/products/comfy-knitted-beanie

fancota.com/products/soft-knitted-ponytail-beanie

flunna.com/products/soft-knit-beanie?variant=5017808437275

greysonandco.com/products/soft-knit-beanie

inspireuplift.com/products/soft-knit-beanie

mywowmart.com/collections/clothing-shoes-jewelry/products/soft-knit-beanie

northsidegear.com/products/messy-bun-knitted-beanie?variant=5928226357283

orangepandastore.com/collections/clothes-accessories/products/soft-knit-ponytail-beanie

shopitty.com/products/soft-knit-beanie?variant=5190797459486

shopmy.deals/products/beanie

trendychaser.com/products/soft-knit-ponytail-beanie

unikgadgets.com/products/nouveau-bonnet-maille-douce

womanoocean.com/products/soft-knit-beanie

zongood.com/products/soft-knit-beanie-buy-1-get-1-free?variant=8049381474346A

A print out of a GOOGLE images search showing websites containing the image is attached hereto as Exhibit C.

FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT
(17 U.S.C. 101 et seq.)

102. Contagious incorporates herein each and every allegation set forth in the paragraphs above and further alleges as follows:

103. Contagious is the sole owner of the original copyrighted image and has registered its copyright with the United States Copyright Office.

104. Defendants had access to Contagious' copyrighted images due to publication of Contagious' images on various websites, including jane.com.

105. Defendants have made unauthorized copies of Contagious' image and used said copies on their websites in order to sell Defendants' products.

106. Defendants' use of Contagious' photographs was without Contagious' authorization or permission.

107. Defendants continue to offer for sale and/or sell product using Contagious' images.

108. Contagious would charge a minimum of \$5,000.00 per image per website to utilize its images to market products.

109. Defendants have obtained a profit utilizing the image taken from Contagious.

110. Wherefore, Contagious makes a claim against Defendants for copyright infringement.

SECOND CLAIM FOR RELIEF

UNJUST ENRICHMENT

111. Contagious incorporates the preceding allegations and further alleges:
112. Defendants have utilized an image owned by Contagious.
113. The use of Contagious' image conferred a benefit on Defendants.
114. Defendants are aware of the benefit bestowed upon them by use of Contagious' images.
115. It would be unjust to allow Defendants to maintain the benefit bestowed upon them by use of Contagious' image.
116. Wherefore, Contagious makes a claim against Defendants for unjust enrichment.

THIRD CLAIM FOR RELIEF

**DECEPTIVE TRADE PRACTICES
(Utah Code Ann. 13-11a-1 et seq.)**

117. Contagious incorporates herein each and every allegation contained in the paragraphs above and further alleges as follows:
118. Defendants are in the business of selling, among other things, clothing items.
119. In the course of Defendants' business, Defendants used unauthorized copies of Contagious' photograph to sell clothing items.
120. Defendants' actions have caused a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services.
121. Defendants' actions have caused a likelihood of confusion or of misunderstanding as to affiliation, connection, association with or certification by another.

122. At a minimum, Defendants' actions have created a likelihood of that deal websites will believe that Contagious is violating restrictions against offering the same products on multiple deal websites simultaneously.

123. Wherefore, Contagious makes a claim for damages, costs and attorneys' fees under the Utah Truth in Advertising Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for an Order, Judgment, and Injunction as follows:

- A. For damages for each infringement of Contagious' copyright pursuant to 17 U.S.C. § 504 in an amount of: (1) Contagious' actual damages in an amount not less than \$5,000.00 per infringed work per website, and (2) for Defendants' profits;
- B. For an injunction prohibiting Defendants from any further use of Contagious' images;
- C. For an impoundment order requiring that all infringing works be destroyed;
- D. For an award against Defendants in the amount Defendants were unjustly enriched by the unauthorized use of Contagious' photographs;
- E. For an award of damages in an amount not less than \$2,000.00 for Defendants' violation of the Utah Truth in Advertising Act pursuant to Utah Code 13-11a-4(2)(2);
- F. For an award of Contagious' costs and attorneys' fees pursuant to Utah Code 13-11a-4(2)(c);
- G. For an order requiring Defendants to conduct corrective advertising via the same media and with the same distribution and frequency as the advertising found to violate the Utah Truth in Advertising Act pursuant to Utah Code 13-11a-4(3); and

H. For such other and further relief as the Court may deem just and proper.

Plaintiff demands a trial by jury on all matters so triable.

DATED: March 26, 2018.

DURHAM JONES & PINEGAR

/s/ Randall B. Bateman

Randall B. Bateman

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Lauren Chauncey.

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Salt Lake City, UT 84111

Attorneys for Plaintiff Contagious, LLC